

## INITIAL STATEMENT OF REASONS

Current Residential Care Facilities for the Elderly (RCFE) regulations include specific requirements for admission agreements between RCFE licensees and residents, such as services made available, payment provisions, modification conditions, refund conditions and other policies and procedures that pertain to the admission agreement.

These proposed regulations will enact the following specified legislation:

(1) Senate Bill (SB) 1898, Statute of 2002; (2) SB 211, Statute of 2003; (3) SB 540, Statute of 2003; (4) SB 1662, Statute of 2004; (5) Assembly Bill (AB) 179, Statute of 2005; (6) SB 141, Statute of 2005; (7) AB 949, Statute of 2007; (8) SB 781, Statute of 2009; and (9) AB 261, Statute of 2013.

These regulations will expand requirements for admission agreements, increase understanding of the roles and responsibilities of residents and licensees and empower residents and prospective residents with the knowledge they need to make informed decisions about their care. These agreements are an important consumer protection for RCFE residents and prospective residents.

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87101(a)(2) and Handbook

Specific Purpose:

This regulation and handbook reference is adopted to define admission agreement and reference definition in statute. The section has been numbered to Section (a)(2) for the purpose of continuity and pagination in numbering.

Factual Basis:

It is necessary to adopt this regulation and handbook reference in order to implement SB 211, which added Health and Safety (H&S) Code section 1569.880. This statute defines an admission agreement as all documents that a resident or his or her representative must sign at the time, or as a condition of, admission to a RCFE.

Section 87101(a)(3) through (a)(10)

Specific Purpose/Factual Basis:

These sections have been renumbered for the purpose of continuity.

### Section 87101(b)(2) and Handbook

#### Specific Purpose:

This regulation is amended to include in the definition of basic services H&S Code section 1569.312 for purposes of clarity.

#### Factual Basis:

This regulation is necessary to be consistent with H&S Code section 1569.312, which defines basic services required to be provided by the facility. The basic services required include:

- a. Care and supervision.
- b. Assistance with activities of daily living.
- c. Helping residents gain access to appropriate services in the community.
- d. Being aware of the resident's general whereabouts.
- e. Monitoring activities of residents to ensure their general health, safety and well-being.
- f. Encouraging residents to maintain and develop their maximum functional ability planned activities.

### Section 87101(c)(9)

#### Specific Purpose/Factual Basis:

This amendment is for the purposes of clarity and consistency in the renumbering of Section 87101(c)(2) to Section 87101(c)(3).

### Section 87101(h)(6)

#### Specific Purpose:

This regulation is amended to update the correct department name with oversight for Hospice and Home Health Agencies, i.e., formally the California Department of Health Services, to the Department of Public Health.

#### Factual Basis:

This amendment is for the purpose of clarity to correct the licensure responsibility change from the California Department of Health Services, who no longer has licensing oversight responsibilities for Hospice and Home Health Agencies. These responsibilities have been transferred to the California Department of Public Health.

## New Section 87101(n)(4) and Handbook

### Specific Purpose:

This regulation and handbook reference are adopted for clarity and consistency in the meaning of "nonrecurring lump sum assessment," as defined in H&S Code section 1569.655, to mean "rate increases due to unavoidable and unexpected costs that financially obligate the licensee..."

### Factual Basis:

This regulation amendment and handbook reference are adopted for the purpose of clarity and consistency and to necessitate the implementation of SB 1898, which added H&S Code section 1569.655. This statute defines "nonrecurring lump-sum assessments as rate increases due to unavoidable and unexpected costs that financially obligate the licensee. In lieu of the lump-sum payment, all increases in rates shall be to the monthly rate amortized over a 12-month period."

## Section 87101(p)(3)

### Specific Purpose:

This regulation is numbered Section 87101(p)(3) and is adopted for the purpose of clarity and consistency to define "Preadmission Fee," as defined in H&S Code section 1569.651(e).

### Factual Basis:

It is necessary to adopt this regulation in order to implement SB 1898, which added H&S Code section 1569.651(e). This statute defines preadmission fee to mean "an application fee, processing fee, admission fee, entrance fee, community fee or other fee, however designated, that is requested or accepted by a licensee of a residential care facility for the elderly prior to admission."

## Section 87101(p)(4) through Section 87101(p)(6)

### Specific Purpose/Factual Basis:

These regulations have been renumbered Section 87101(p)(4) through Section 87101(p)(6) for the purpose of continuity and numerical pagination.

## Section 87101(r)(4)

### Specific Purpose:

This regulation is adopted to add a definition for representative to provide clarity and consistency with statute.

Factual Basis:

It is necessary to adopt this regulation in order to implement SB Bill 211, which added H&S Code section 1569.880. This statute references, but does not define, representative. This regulation seeks to define representative as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner or family member, a person designated by the resident or other surrogate decision maker designated consistent with statutory and case law."

Section 87101(r)(5) through Section 87101(r)(6)

Specific Purpose/Factual Basis:

These regulations have been renumbered Section 87101(r)(5) through Section 87101(r)(6) for the purpose of continuity and numerical pagination.

Section 87101(r)(7)

Specific Purpose:

This regulation is amended to update the definition of responsible person to align with definition of "representative" in 87101(r)(4) .

Factual Basis:

It is necessary to amend this regulation to align the "responsible person" definition with the "representative" definition. These terms are used interchangeably in statute and regulation, but in practice are referring to the same group of individuals. This amendment is also deleting reference to "placement agency" as a responsible person, as that is not an appropriate role for a placement agency. Through promulgation of these regulations, a definition is provided for representative.

Section 87101(r)(8)

Specific Purpose/Factual Basis:

This regulation has been renumbered for the purpose of continuity and numerical pagination.

Section 87101(u)(1)(B)(2)(iii)

Specific Purpose/Factual Basis:

This regulation has been numbered to correct prior error in numbering sequence, from Section 87101(u)(B)(2)(iv) to 87101(u)(B)(2)(iii), for the purpose of continuity and roman numerical pagination.

Section 87101(u)(2)(A)

Specific Purpose/Factual Basis:

This regulation is amended to add the word "an" and to amend the section reference number, 87101(c)(2) to 87101(c)(3), for the purpose of continuity in numerical pagination.

Section 87464(f)(1) and Handbook

Specific Purpose/Factual Basis:

This regulation is adopted to introduce and add Section 87464(f)(1) and to add Handbook provisions that pertain to H&S Code section 1569.2(b). This regulation also is added for the purpose of clarity and consistency in defining the minimum basic services that shall be included as specified in H&S Code section 1569.312(a), which provides that RCFEs must provide basic services that include care and supervision.

Section 87464(f)(1) through Section 87464(f)(6)

Specific Purpose/Factual Basis:

Sections 87464(f)(1) through 87464(f)(6) are renumbered to Sections 87464(f)(2) through 87464(f)(7) to accommodate the addition of Subsection 87464(f)(1) for the purpose of continuity and numerical pagination.

Section 87507(a)

Specific Purpose:

This regulation is amended to add a reference to the definition of admission agreement as referenced in Section 87101(a). This amendment is also to strike the words "and that," and "responsible person or conservator," and to add the words, "or the" and "representative," as defined in Section 87101(r)(4) and as referenced in H&S Code section 1569.880.

Factual Basis:

It is necessary to amend this regulation for the purpose of clarity and consistency with the requirements of H&S Code section 1569.880 – which references "representative" and

requires the resident or representative sign the admission agreement, not both - and to ensure consistency with current RCFE regulations.

Section 87507(a)(1), (a)(1)(A), and (a)(1)(B)

Specific Purpose:

These regulations are to adopt for the purposes of clarity and to make consistent, specific RCFE requirements in the text of the admission agreement, as defined in H&S Code section 1569.882.

Factual Basis:

It is necessary for the purposes of clarity and consistency to adopt these regulations in order to implement SB 211 (2003), which added H&S Code sections 1569.882(a) and (b). H&S Code section 1569.882 defines specific text requirements of the admission agreement, i.e., "The text of the Admission Agreement shall be in black type of not less than 12-point type size, on plain white paper and shall appear on one side of the paper only. It should be written in clear, coherent and unambiguous language, using common and everyday meanings." Further, H&S Code section 1569.882 states that the admission agreement shall be appropriately divided and captioned.

Section 87507(b)

Specific Purpose:

This amendment is for the purpose of clarity and consistency regarding the most current revision date for the LIC 9158 form, as amended in November 2004 (11/04).

Factual Basis:

This amendment is for the purposes of clarity and consistency regarding the current version of the Telecommunications Device Notification form LIC 9158 reference. Form LIC 9158 was revised with a current version date of November 2004 (11/04). Revisions to this form were made in 10/02 and 11/04. Revisions made since the 5/97 date referenced in regulation include: (1) reference to the original form to be provided to the client/client representative and a copy of the form to be placed in the client/resident file; (2) adding check boxes to identify Adult Day Program and Residential Care Facility for the Chronically Ill facility types; (3) deleting term "by the telephone company;" (4) adding California in reference to Public Utilities Code; (5) adding "qualified" in reference to state or federal agency; (6) adding "...pursuant to Section 2881 of the Public Utilities Code,..."; (7) updating reference from "local telephone company" to "California Telephone Access Program at 1-800-806-1191;" (8) updating reference to "Client Signature" to "Client/Resident Signature;" (9) adding "if any" after "Conservator/Responsible Party/Authorized Representative Signature;" (10) updating statute language for the California Public Utilities Code section 2881 (a) and (c); and (11) deleting triplicate distribution information as form is now only available

online. This amendment makes this form reference consistent with the current version and date that appears on the Community Care Licensing Division (CCLD) website.

#### Section 87507(c)

##### Specific Purpose:

This regulation is amended to (1) add the word "admission" as a subject for purposes of clarity; (2) strike the word "such;" (3) strike reference order of the words "dated and signed" and replace this reference with the words "signed and dated;" (4) strike reference to "and" to replace with the term "or;" (5) add "representative, if any;" (6) and, strike out "responsible person or conservator." For purposes of clarity and consistency in pagination the former Section 87507(e) is renumbered to 87507(c).

##### Factual Basis:

It is necessary to amend this regulation in order to implement SB 211 (2003) and comply with the specific language and words adopted in H&S Code section 1569.887(a).

#### Section 87507(d)

##### Specific Purpose:

Current regulation in Subsection (d), which addresses the posting of additional services available through the facility to be purchased by residents, is repealed because it is superseded by H&S Code section 1569.884(c), which is more specific, requiring a facility to provide a list of charges to the resident or the resident representative, as well as acknowledgement of additional charges, that is signed and dated by the resident or their representative and attached to the admission agreement. Regulation in current Subsection (f) is renumbered to Subsection (d) for purposes of continuity and pagination in renumbering and amended to add the words "signed and dated" for the purpose of clarity and consistency with the H&S Code section 1569.887.

##### Factual Basis:

It is necessary to repeal current regulation in Subsection (d) because the concept contained therein is superseded by H&S Code section 1569.884(c), which is more specific, requiring a facility to provide a list of charges to the resident or the resident's representative, as well as signed acknowledgment of additional charges that is signed and dated by the resident or the resident's representative and attached to the admission agreement. It is also necessary to amend the regulation renumbered to Subsection (d) in order to implement SB 211 and comply with the specific language and words adopted in H&S Code section 1569.887. This statute requires the original of the initial admission agreement and any subsequent modifications to be signed and dated.

### Section 87507(e)

#### Specific Purpose:

This regulation is amended for purposes of clarity and consistency with H&S Code section 1569.887(c) to do the following: (1) add the words "signed and dated," (2) add the words "and all subsequent signed and dated modifications," (3) to strike the word "and" and add the word "or," (4) to strike the words "responsible person or conservator" and replace it with the word "representative," and clarify that the documents need to be provided "immediately upon signing and additional copies furnished upon request." Section 87507(e) amends the language as noted above and replaces the former Section 87507(f)(1). The renumbering is for purposes of clarity and pagination in numbering.

#### Factual Basis:

It is necessary to amend this regulation in order to implement SB 211 (2003), for purposes of clarity and to make consistent the words, as adopted in H&S Code section 1569.887(c) and to ensure that all applicable documents related to the admission agreement are provided to the resident or resident's representative, if any.

### Section 87507(e)(1) and (2)

#### Specific Purpose:

These regulations are adopted to implement provisions as mandated in SB 211 (2003), and in statutes amended as specified in H&S Code section 1569.881(a) and (b), pertaining to the availability and posting requirements of the admission agreement, as defined.

#### Factual Basis:

It is necessary for clarity and consistency to adopt these regulations in order to implement SB 211 (2003), which amended H&S Code sections 1569.881(a) and (b). These statutes require that blank complete copies of the most current admission agreement be immediately made available to the public upon request and that the facility may charge fees (at the cost) for copying or mailing the agreement. These statutes also require that a complete copy of the admission agreement or notice of its availability shall be conspicuously posted in a location in the facility that is accessible to the public view. These proposed regulations clarify that a complete copy of the admission agreement includes modifications and attachments.



#### Section 87507(f)

##### Specific Purpose/Factual Basis:

For purposes of clarity and continuity Section 87507(f) replaces former Section 87507(g), which has been repealed, in part, and moved as amended to Section 87507(h)(2) in order to implement SB 211 (2003).

#### Section 87507(g)

##### Specific Purpose:

The word "admission" is added as a subject for purposes of clarity and consistency. For purposes of clarity and continuity of subject matter, Section 87507(g) replaces former Section 87507(c) as amended in order to implement SB 211 (2003) and the requirements specified in H&S Code section 1569.884.

##### Factual Basis:

It is necessary to amend the language in this regulation for the purpose of clarity, continuity of like subject matter and content required as specified in H&S Code section 1569.884.

#### Section 87507 (g)(1) and (2)

##### Specific Purpose:

These regulations are amended to add the reference section that defines basic services and to add the words "items and" to further specify how optional services are to be defined, as amended, in order to implement SB 211 (2003) and the requirements specified in H&S Code section 1569.884(a).

##### Factual Basis:

It is necessary for purposes of clarity and consistency to amend these regulations in order to implement SB 211 (2003), which amended H&S Code section 1569.884(a).

#### Section 87507(g)(3)(A)

##### Specific Purpose:

This regulation is amended to implement the provision under SB 211 (2003) and in statute as specified in H&S Code section 1569.884(a) pertaining to basic services rates, which in statute is referenced as "items and services under a single fee." This regulation also deletes a portion of the sentence "including any exempt income allowance, if the resident agrees to such charge" and moves this language, as amended, to Section 87507(g)(3)(A)(2).

Factual Basis:

It is necessary for clarity and consistency to amend this regulation in order to implement SB 211 (2003) and adopt the provisions as amended in H&S Code section 1569.884(a).

Section 87507(g)(3)(A)(1) and (g)(3)(A)(2)

Specific Purpose:

These regulations are adopted to implement payment provisions as identified in SB 211 (2003) and to adopt the specific provisions in H&S Code section 1569.884. A portion of the previous sentence from Section 87507(g)(3)(A) has been adopted into Section 87507(3)(g)(A)(2).

Factual Basis:

It is necessary to amend this regulation for the purpose of clarity and consistency in order to implement SB 211 (2003), which amended H&S Code section 1569.884(a). This statute requires that a comprehensive description be provided of any items and services provided under a single fee, as specified. This regulation requires a comprehensive description of basic services (items and services provided under a single fee) be provided by requiring all basic services charges to be listed, even if the basic services are charged under a fixed monthly fee and provides that exempt-income-allowance may be included if the resident agrees to the charge.

Section 87507(g)(3)(B)

Specific Purpose:

This regulation is amended for purposes of clarity and consistency to add the words "items and" to topic subject Optional Services, as defined in H&S Code section 1569.884(b).

Factual Basis:

For purposes of clarity and consistency it is necessary to add these words to the regulation in order to implement SB 211 (2003) and the wording used in H&S Code section 1569.884(b).

Section 87507(g)(3)(B)(1) through (5) and Handbook

Specific Purpose:

These regulations are adopted for the purpose of clarity and consistency to specify fee and service charges to be included in the admission agreement as specified in H&S Code section 1569.884(b), (c) and (d).

Factual Basis:

These regulations and handbook reference are adopted for the purposes of clarity and consistency in order to implement SB 211 (2003), which amended H&S Code section 1569.884(b), (c) and (d). The following is a summary of statutory requirements:

- (1) A comprehensive description and fee schedule for all optional items (those not included in the single fee) and services shall be included.
- (2) A separate charge for an item or service may be assessed only if that charge is authorized by the admission agreement.
- (3) If additional items and/or services were not available at the time the admission agreement was signed, a list of these services and charges shall be provided.
- (4) The acceptance or refusal to purchase optional services shall be signed and dated and be attached to the admission agreement.
- (5) The use of third-party services shall be explained as to how they are related to the resident's service plan.

Section 87507(g)(3)(C)(1) through (4)

Specific Purpose:

These regulations are adopted for the purpose of clarity and consistency in order to implement SB 1898 (2002), which adopted H&S Code section 1569.651(a) through (d) to specify that fees charged prior to and after admission shall be clear, as specified in statute.

Factual Basis:

It is necessary for clarity and consistency with statute to add these regulations in order to implement SB 1898 (2002), which adopted H&S Code section 1569.651(a) through (d). This statute requires that for licensees that require preadmission fees, they must meet specified notice and refund requirements - that only one preadmission fee may be charged except in the case of those recipients under the State Supplementary Program for the Aged, Blind and Disabled. In addition, the licensee shall not require, request or accept any funds that constitute a deposit against any possible damages.

Section 87507(g)(3)(D)

Specific Purpose:

This regulation is amended for purposes of clarity and consistency with statute by renumbering the former Section 87507(g)(3)(C), which referenced "payor" to Section 87507(g)(3)(D) for purposes of clarity and continuity in numbering and pagination and to add the term "... of all items and services" as it relates to H&S Code section 1569.884 to ensure the admission agreement reflects who is responsible for payment. This amendment also renumbers the former Section 87507(g)(3)(C) to this

Section 87507(g)(3)(D) for the purposes of clarity and continuity in numbering and pagination.

Factual Basis:

It is necessary to amend the language in this regulation for the purpose of clarity and consistency as defined in statute H&S Code section 1569.884 and to implement the requirements of SB 211 (2003) into regulations.

Section 87507 (g)(3)(E) and 87507(g)(3)(F)

Specific Purpose/Factual Basis:

For the purposes of clarity and continuity in numbering pagination, these regulations have been renumbered from the former Sections 87507(g)(3)(D) and (E) to Sections 87507 (g)(3)(E) and (F).

Section 87507(g)(3)(G) and (g)(3)(H)

Specific Purpose:

These regulations are adopted to clarify and to implement the provisions of SB 211 (2003), which amended H&S Code section 1569.884(b), specifying the requirements of billing and charges in the admission agreement as defined in statute.

Factual Basis:

It is necessary for purposes of clarity and consistency in implementing the requirements of SB 211 (2003) to adopt these regulations which were amended by H&S Code section 1569.884(b). This statute requires a comprehensive description of billing payment and procedures and an itemized monthly statement that lists all separate charges to be provided.

Section 87507(g)(4)

Specific Purpose:

It is necessary for clarity and consistency with H&S Code section 1569.655(a) to amend this regulation to reflect a 60 day requirement of notification of any rate or rate structure change to residents as amended. The previous requirement for notification of basic rate changes was 30 days. This regulation specifies "rate or rate structure" as to apply to the licensees' fees, not fees for optional services that are provided by individuals, professionals and organizations under a separate fee-for-service arrangement with residents, as H&S Code section 1569.655(a) specifically excludes those. This regulation is also amended to move the words "as soon as the facility is notified" to the middle of the sentence for clarity and ease of reading.

Factual Basis:

It is necessary for purposes of clarity and consistency to amend this regulation in order to implement the provisions of SB 1898 (2002), which amended H&S Code section 1569.655(a). This statute requires that if a licensee makes any increases in rate or rate structures for service(s), the licensee shall provide no less than 60 days' prior written notification to the resident(s).

Section 87507(g)(4)(A)

Specific Purpose:

This regulation is amended to add the word "admission" as a subject to the word "agreement" for purposes of clarity and consistency.

Factual Basis:

This amendment is added for the purpose of clarity and consistency regarding subject matter in regulations, i.e., admission agreement. This amendment has no other substantive effect on these regulations.

Section 87507(g)(4)(B) and Handbook

Specific Purpose:

This regulation and Handbook reference are adopted to implement the provisions in SB 1898 (2002), which added H&S Code section 1569.655 and the provisions in SB 1662 (2004), which added H&S Code section 1569.657 pertaining to rate change(s) requirements in regulation.

Factual Basis:

It is necessary for purposes of clarity and consistency in order to implement SB 1898 (2002), which added H&S Code section 1569.655 and SB 1662 (2004), which added H&S Code section 1569.657, to adopt this regulation. These statutes provide the specific conditions under which a licensee may increase or change the rate(s) in the admission agreement. It is also necessary for purposes of clarity and consistency at the discretion of the Department to add this Handbook provision that specifies the statute requirements in H&S Code sections 1569.655 and 1569.657.

In summary, specific requirements of H&S Code section 1569.655 include:

- (1) Sixty days' prior written notice for any basic rate increase. This does not include rate increases due to the level of care or optional services.

- (2) A nonrecurring lump-sum assessment cannot be charged. In lieu of the lump-sum assessment, the assessment can be amortized over a 12-month period.
- (3) The licensee to meet the requirements for SSI/SSP rate increases.
- (4) This section does not apply to licensees who have obtained a certificate of authority to offer continuing care contracts.

In summary, specific requirements of H&S Code section 1569.657 include:

- (1) For a level of care increase, a written notice of rate increase be provided within two business days after providing care. The notice is to include a detailed explanation of the additional services and itemization of charges.
- (2) This does not apply to any resident who is under the SSI/SSP program.
- (3) This section does not apply to licensees who have obtained a certificate of authority to offer continuing care contracts.

#### Section 87507(g)(5)(A)

##### Specific Purpose:

This amendment is necessary for the purpose of clarity in correcting the referenced regulation from Section 87612(a) to Section 87223, Relocation of Resident, as renumbered.

##### Factual Basis:

It is necessary for purposes of clarity to update this regulation due to the renumbering of the regulation referenced, Relocation of Resident (Section 87223).

#### Section 87507(g)(5)(B) et seq.

##### Specific Purpose:

These regulations are adopted for the purpose of clarity and consistency to implement the provisions of AB 949 (2007), which added H&S Code section 1569.682(a) regarding refund provisions of prepaid monthly fees.

##### Factual Basis:

It is necessary for purposes of clarity and consistency to adopt these regulations in order to implement the provisions of AB 949 (2007), which added H&S Code section 1569.682(a). This statute requires a licensee of a RCFE, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in H&S Code section 1569.19 or a change of use of the facility pursuant to the Department's regulations, to follow specified procedures. It also is necessary to adopt these regulations to require the specifics as added and defined in H&S Code section 1569.886(d).

This statute requires RCFE admission agreements to include the responsibilities of the licensee and the rights of the resident when a facility evicts residents pursuant to H&S Code section 1569.682.

Section 87507(g)(5)(C) and (C)(1)

Specific Purpose:

These regulations are adopted for the purposes of clarity and consistency in order to implement AB 949 (2007), which added H&S Code section 1569.682(a)(7) regarding refund provisions for prepaid monthly fees as specified.

Factual Basis:

It is necessary for clarity and consistency to adopt these regulations in order to implement AB 949 (2007), which added H&S Code section 1569.682(a)(7). This statute requires a licensee to refund to the resident or his/her representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated if the resident gives notice five days before leaving the facility. Otherwise, the statute requires the licensee to pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated. It is also necessary to adopt these regulations in order to implement AB 949 (2007), which added H&S Code section 1569.886(d). This statute, H&S Code section 1569.886(d), requires RCFE admission agreements to include the responsibilities of the licensee and the rights of the resident when a facility evicts residents pursuant to H&S Code section 1569.682.

Section 87507(g)(5)(D) et seq.

Specific Purpose:

These regulations are adopted for purposes of clarity and consistency to implement the provisions specified in SB 141 (2005) and AB 949 (2007) respectively and as identified and defined below in statutes as they specifically pertain to preadmission fee refunds.

Factual Basis:

It is necessary for purposes of clarity and consistency in implementing SB 141 (2005) to adopt Section 87507(g)(5)(D) to add the requirements, as specified in H&S Code section 1569.651, which addresses preadmission fee refunds.

It is necessary for purposes of clarity and consistency in implementing SB 141 (2005) to adopt Section 87507(g)(5)(D)(1) et seq. to add the requirements of H&S Code section 1569.651(g) to require that an applicant or the applicant's representative shall be entitled to a 100 percent refund of a preadmission fee if the applicant decides not to enter the facility prior to the facility's completion of a preadmission appraisal, or if the

facility fails to provide full written disclosure of the preadmission fee charges and refund conditions.

It is necessary for purposes of clarity and consistency in order to implement SB 141 (2005), to add Section 87507(g)(5)(D)(2) et seq. and to add the specific requirements defined and added by H&S Code sections 1569.651(h)(1) through (5). These statutes require preadmission fees in excess of five hundred dollars (\$500) to be refunded in accordance to specified refund amounts and specified periods of time of residence by the resident.

It is necessary for purposes of clarity and consistency in order to implement AB 949 (2007), to add Section 87507(g)(5)(D)(3) et seq. and to add the specific requirements defined and added by H&S Code sections 1569.651(i)(1)(A) through (D), 1569.651(i)(2), 1569.682(a)(6)(A)(i) through (iv) and 1569.682(a)(6)(B). These statutes require that if a resident of a RCFE is evicted as a result of the forfeiture of a license or change of use of the facility, the resident or the resident's representative shall be entitled to a refund of preadmission fees in excess of five hundred dollars (\$500) in accordance with specified refund amounts and periods of time. It is also necessary to add this regulation in order to implement AB 949 (2007), which added H&S Code section 1569.886(d). This statute requires RCFE admission agreements to include the responsibilities of the licensee and the rights of the resident when a facility evicts residents pursuant to H&S Code section 1569.682.

It is necessary for clarity and consistency to adopt Section 87507(g)(5)(D)(3)(b) in order to implement AB 949 (2007), which added H&S Code sections 1569.651(i)(3) and 1569.682(a)(6)(C). These statutes require that preadmission fee refunds shall be paid within 15 days of issuing an eviction notice, if a resident is evicted pursuant to requirements in H&S Code section 1569.682. H&S Code section 1569.682(a)(6)(C) also allows a resident, in lieu of a preadmission fee refund, to request that the licensee provide a credit toward the resident's monthly fee obligation in an amount equal to the preadmission fee refund.

#### Handbook Section 87507(g)(5)(D)(3)(b)

##### Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensing Program Analyst (LPA), responsible for enforcement in the CCLD, to the referenced H&S Code section 1569.525(f) in Section 87507(g)(5)(D)(3)(b). Providing statute in the regulation as "Handbook" material is at the discretion and formatting preference/style of CDSS. Handbook material is for the ease of reference material and is not "cited" by LPA staff within CCLD for enforcement purposes.



#### Section 87507(g)(6)

##### Specific Purpose:

This regulation is amended to strike the word "That," begin the sentence with the word "The," and to strike the words "has the" for purposes of clarity and ease of reading.

##### Factual Basis:

It is necessary for purposes of clarity and ease of reading to amend this regulation based on the authority and discretion of the Department.

#### Section 87507(g)(7) and Handbook

##### Specific Purpose:

This provision is amended for clarity and consistency to implement the amendments in H&S Code section 1569.313. The amendments in Handbook include striking the word "that" and adopt the words "The facility's" and "concerning family visits and communication," as well as adding the word "client." Section 87507(g)(7) and handbook reference are renumbered from the prior Section 87507(c)(9).

##### Factual Basis:

It is necessary for purposes of clarity and consistency in numbering pagination and to amend the Handbook reference for this regulation to ensure clarity and consistency with the amended H&S Code section 1569.313.

#### Section 87507(g)(8)

##### Specific Purpose:

This regulation is amended to strike the word "which" and add the word "that" for the purpose of clarity and readability. Section 87507(c)(8) is renumbered from Section 87507(c)(7) for purposes of numbering pagination.

##### Factual Basis:

This regulation is amended for the purpose of clarity, consistency and for ease of readability and to provide consistency in the pagination of numbering.

#### Section 87507(g)(8)(A) and (B)

##### Specific Purpose:

These regulations are adopted to implement the provisions of SB 211 (2003) and for the purposes of clarity and consistency with the amendments in H&S Code section 1569.885(a) requiring facility policies to be adopted as specified.

##### Factual Basis:

It is necessary for purposes of clarity and consistency to implement the provisions of SB 211 (2003) and to adopt these regulations as specified in statute H&S Code section 1569.885(a). These statutes require the admission agreement to indicate that facility rules must be reasonable, that there is a facility procedure for suggesting changes to facility rules and that the policies shall not violate any applicable rights, laws or regulations.

#### Section 87507(g)(9)

##### Specific Purpose:

This regulation is adopted for purpose of clarity and consistency to implement SB 211 (2003) and to adopt statute in H&S Code section 1569.885(b), which requires the admission agreement to specify that a copy of the facility grievance procedure shall be made available to the resident or his or her representative.

##### Factual Basis:

It is necessary to for purposes of clarity and consistency to implement SB 211 (2003), which added H&S Code section 1569.885(b). This statute requires the admission agreement to specify that a copy of the facility grievance procedures shall be made available to the resident and his or her representative.

#### Section 87507(g)(10)

##### Specific Purpose:

This regulation is added as specified in H&S Code section 1569.886(a) to include provisions that pertain to involuntary transfer or eviction of residents.

##### Factual Basis:

This regulation is added for purposes of clarity and consistency to implement SB 211 (2003) and to add regulation as specified in H&S Code section 1569.886(a) to specifically address the requirements regarding involuntary transfer or eviction of residents.

Section 87507(g)(10)(A)

Specific Purpose:

This regulation is amended to do the following: (1) To strike the word "Those" and add the word "The," (2) To strike the word "specified" and add the word "listed," (3) To strike the word "which" and to add the word "that" for purposes of clarity and consistency with statute H&S Code section 1569.886(a). Additionally, Subsection (g)(10)(A) is renumbered and amended from the Subsection (c)(8).

Factual Basis:

It is necessary for purposes of clarity and consistency to implement SB 211 (2003) and to add regulation as specified in H&S Code section 1569.886(a) to specifically address the requirements regarding involuntary transfer or eviction of residents as defined.

Section 87507(g)(10)(B)

Specific Purpose:

This regulation is added for clarity and consistency in implementing the provision of SB 211 (2003) and to add this regulation as required in H&S Code section 1569.886(a) specifically to the grounds under state law or regulation that allow for an involuntary transfer or eviction of residents, as well as specifying that grounds shall not be included that are not specified under state law or regulation.

Factual Basis:

This regulation is adopted for purposes of clarity and consistency to implement SB 211 (2003), which added H&S Code section 1569.886(a). This statute prohibits admission agreements from including any ground for involuntary transfer or eviction of the resident unless those grounds are specified under state law or regulation.

Section 87507(g)(10)(C)

Specific Purpose:

This regulation is added for clarity and consistency to implement provisions of SB 211 (2003) and to comply with statute H&S Code section 1569.886(b) pertaining to the justification wording to be exactly as shown in the applicable state law or regulation that permits the eviction of a resident.

Factual Basis:

This regulation is added for purposes of clarity and consistency to implement provisions of

SB 211 (2003), which added H&S Code section 1569.886(b). This statute requires the admission agreement to word the justification(s) for eviction exactly as shown in the applicable state law or regulation as specified.

Section 87507(g)(10)(D) though (F)

Specific Purpose:

These regulations are added for clarity and consistency to implement the provision of SB 211 (2003) and as specified in H&S Code section 1569.886(c), pertaining to an explanation of resident's rights to notice prior to an involuntary transfer, discharge, eviction or the involuntary transfer of residents.

Factual Basis:

It is necessary for the purposes of clarity and consistency in order to implement SB 211 (2003) to add these regulations as required by H&S Code section 1569.886(c). This statute requires admission agreements to include an explanation of the resident's rights with regards to involuntary transfer, discharge or eviction, resident's appeal procedures and a description of relocation assistance offered by the facility.

Section 87507(g)(10)(G) and Handbook

Specific Purpose:

This regulation and handbook reference is added for the purpose of clarity and consistency to implement AB 949 (2007). This section is to also adopt regulations required by H&S Code section 1569.884(j) pertaining to the rights of the resident and the responsibilities of the licensee regarding facility closure, relocation evaluations and assistance and providing notice when a licensee evicts a resident as specified in H&S Code sections 1569.682 and 1569.683.

Factual Basis:

It is necessary for purposes of clarity and consistency to implement provisions of AB 949 (2007) and to add regulations required by H&S Code section 1569.884(j). This statute requires admission agreements to include an explanation of the facility's responsibility to prepare resident relocation evaluations and closure plans and to provide eviction notices pursuant to H&S Code section 1569.682. It is also necessary to include Handbook provisions that reference H&S Code sections 1569.682 and 1569.683 at the discretion and department standard in formatting in Title 22 regulation. These Handbook provisions are added for purposes of clarity, consistency and ease of use. H&S Code section 1569.682, added by AB 949 (2007), annotates licensee's responsibilities and residents' rights in the event of a resident transfer due to license forfeiture or a facility change of use. H&S Code section 1569.683 was added by SB 781 (2009) and annotates licensee's responsibilities and residents' rights in the event of the eviction of a resident.

#### Section 87507(g)(11)

##### Specific Purpose/Factual Basis:

This regulation, Section 87507(g)(11), is renumbered from previous Section 87507(g)(10) for the purpose of clarity, consistency and ease of use with pagination in numbering of these regulations.

#### Section 87507(g)(12)

##### Specific Purpose

This regulation is added for clarity and consistency to implement a provision of SB 211 (2003), which requires the admission agreement inform a resident of their right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances at the facility.

##### Factual Basis

It is necessary for purpose of clarity and consistency in order to implement SB 211 (2003) which added H&S Code section 1569.885(c). This statute requires the admission agreement to inform a resident of their right to contact the State Department of Social Services, long-term care ombudsman, or both, regarding grievances against the facility.

#### Section 87507(h)

##### Specific Purpose:

This regulation is added for clarity and consistency to implement the provisions of SB 211 (2003), which pertains to the terms and conditions which may not be contained in admission agreements.

##### Factual Basis:

It is necessary for purposes of clarity and consistency, set forth in SB 211 (2003), to add this regulation specifically to prohibit provisions from admission agreements as specified.

#### Section 87507(h)(1)

##### Specific Purpose:

This regulation is added for clarity and consistency to implement the provisions of SB 211 (2003), which specify terms and conditions that may not be contained in admission agreements.

Factual Basis:

It is necessary for clarity and consistency in order to implement SB 211 (2003) and to adopt into regulations the specific prohibitions in H&S Code section 1569.880(b). The adoption of this regulation prohibits admission agreements from including any provision that is prohibited from being included in admission agreements.

Section 87507(h)(2)

Specific Purpose:

This regulation is added for clarity and consistency to implement SB 211 (2003) and to adopt the prohibitions in H&S Code section 1569.883(a). The adoption of this regulation prohibits admission agreements from including unlawful waivers of facility liability for the health and safety or personal property of residents. This regulation also consolidates the portion of regulations moved from former Section 87507(g).

Factual Basis:

It is necessary for clarity and consistency to add this regulation in order to implement the provisions of SB 211 (2003) and to adopt into regulation the requirements of H&S Code section 1569.883(a). This statute makes it unlawful for admission agreements to include any waivers of facility liability for the health, safety or personal property of residents. Additionally, this regulation adds and consolidates a portion of former Section 87507(g) which stated that “No written or oral contract with any other person shall release the licensee from responsibility for provision of safe and healthful facilities, equipment, and accommodations.”

Section 87507(h)(3)

Specific Purpose:

This regulation is added for clarity and consistency to implement the provisions of SB 211 (2003) and to adopt the prohibitions specified in H&S Code section 1569.883(b) requiring that admission agreements shall not include any provision(s) that the facility knows or should know is deceptive or unlawful under state or federal law.

Factual Basis:

It is necessary for the purposes of clarity and consistency to implement SB 211 (2003) and to add regulation as required in H&S Code section 1569.883(b), prohibiting admission agreements from including any provision(s) that the facility knows or should know is deceptive or unlawful under state or federal law. “Applicable” as added as a qualifier to clarify this prohibition.

#### Section 87507(h)(4)

##### Specific Purpose:

This regulation is added for clarity and consistency to implement the provisions of SB 211 (2003) and to add to regulation the requirements specified in statute H&S Code section 1569.885(a).

##### Factual Basis:

It is necessary for purposes of clarity and consistency to implement SB 211 (2003) and to add this regulation to adopt statute in H&S Code section 1569.885(a). This statute prohibits admission agreements from including facility rules that violate any right set forth in applicable laws and regulations – which include Title 22 section 87468 (Personal Rights) and the Residential Care Facility for the Elderly Act (H&S Code section 1569 et seq.).

#### Section 87507(i)

##### Specific Purpose:

This regulation is being amended to add the word "admission" for the purpose of clarity and consistency with subject matter and amend language to align with AB 261 (2013), specifically to the admission agreement, which includes repealing the following: "be automatically terminated by" and ", whose relatives shall not be liable for any payment beyond that due at death, unless agreed to in writing or ordered by the court."

##### Factual Basis:

It is necessary for purposes of clarity and consistency to implement AB 261 (2013), specific to the admission agreement, which prohibits a licensee from requiring advance notice to terminate an admission agreement upon the death of a resident. There is no longer discretion for a licensee and resident to agree in writing to an alternative agreement or authority for the court to impose an alternative agreement.

#### Section 87507(j)

##### Specific Purpose/Factual Basis:

This regulation has been renumbered to Section 87507(j) from former Section 87507(i) for the purpose of clarity, consistency and pagination of numbering text.

#### Section 87507(k)

##### Specific Purpose

This regulation is added for clarity and consistency to implement a provision of SB 211 (2003), which requires the admission agreement to be reviewed at the time of a compliance visit and in response to a complaint involving the admission agreement.

##### Factual Basis

It is necessary for purpose of clarity and consistency in order to implement SB 211 (2003), which added H&S Code section 1569.887(d) which requires the DSS to review that admission agreement during a compliance visit and in response to a claim involving the admission agreement.

#### Section 87507(l)

##### Specific Purpose

This regulation is added for clarity and consistency to implement provisions of SB 211 (2003) and AB 179 (2005), which requires the admission agreement to include a copy of applicable resident's rights, including information on the reporting of suspected or known elder and dependent adult abuse, as set forth in H&S Code section 1569.889.

##### Factual Basis

It is necessary for purpose of clarity and consistency in order to implement SB 211 (2003), which added H&S Code section 1569.885(d) and AB 179 (2005), which added H&S Code section 1569.885(e). These statutes require that the admission agreement include a copy of applicable resident's rights, and further specify that those rights shall include information on the reporting of suspected or known elder and dependent adult abuse, as set forth in H&S Code section 1569.889.

#### Section 87706(a)(3)

##### Specific Purpose:

This regulation is being amended to update a cross-reference citation.

##### Factual Basis:

This amendment is necessary for clarity and consistency to update a cross-reference citation that will change through the promulgation of this regulation package. Section 87706(a)(3) references Section 87507(e), but that section is being renumbered to Section 87507(c). Other changes made to the former Section 87507(e) are discussed above in Section 87507(c).



Handbook Section 87706(a)(5)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the LPA, responsible for enforcement in CCLD, to the referenced H&S Code section 1569.628 in Section 87706(a)(5). This statute was added as a result of AB 540 (2003). Providing statute in the regulation as "Handbook" material is at the discretion and formatting preference/style of CDSS. Handbook material is for the ease of reference material and is not cited by LPA staff within CCLD for enforcement purposes.

b) Identification of Documents Upon Which Department Is Relying

The following documents were relied upon:

- AB 261, Chapter 290, Statutes of 2013;
- AB 949, Chapter 686, Statutes of 2007;
- H&S Code sections 1569.2(b), 1569.312(a), 1569.525(f);
- SB 141, Chapter 250, Statutes of 2005;
- AB 179, Chapter 456, Statutes of 2005;
- SB 211, Chapter 409, Statutes of 2003;
- SB 540, Chapter 322, Statutes of 2003;
- SB 781, Chapter 617, Statutes of 2009;
- SB 1662, Chapter 401, Statutes of 2004; and
- SB 1898, Chapter 557, Statutes of 2002.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

These regulations are developed in response to legislation – including SB 1898 (Chapter 557, Statutes of 2002); SB 211 (Chapter 409, Statutes of 2003); SB 540 (Chapter 322, Statutes of 2003); SB 1662 (Chapter 401, Statutes of 2004); SB 141 (Chapter 250, Statutes of 2005); AB 179 (Chapter 456, Statutes of 2005); AB 949 (Chapter 686, Statutes of 2007); SB 781 (Chapter 617, Statutes of 2009); and AB 261 (Chapter 290, Statutes of 2013), which amended requirements related to admission agreements.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact on Business

The changes reflected in these regulations codify statutes that have been in effect as far back as 2002, with the majority of bills being passed between 2002 and 2009. The most recent bill included in this package was passed in 2013 and reflects a single change in the regulations proposed. CDSS has not received any facts, evidence, documents, testimony or other evidence to indicate there has been any significant, statewide adverse economic impact on business related to these laws. In addition, proposed regulations are implementing state law. If there were to be any adverse economic impact on business it would be a result of the passage of the enacting laws, not the regulations themselves. As such, CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**The Creation or Elimination of Jobs Within the State of California**

These proposed regulations codify statutes that have been in effect as far back as 2002, with the majority of bills being passed between 2002 and 2009. The most recent bill included in this package (AB 261) was passed in 2013 and reflects a single change in the regulations proposed. Bills enacted through this regulatory action include: SB 1898, Chapter 557, Statutes of 2002; SB 211, Chapter 409, Statutes of 2003; SB 540, Chapter 322, Statutes of 2003; SB 1662, Chapter 401, Statutes of 2004; SB 141, Chapter 250, Statutes of 2005; AB 179, Chapter 456, Statutes of 2005; AB 949, Chapter 686, Statutes of 2007; SB 781, Chapter 617, Statutes of 2009; and AB 261, Chapter 290, Statutes of 2013. The proposed regulations are implementing state laws. If there were to be any impact on the creation or elimination of jobs within the State of California, it would be a result of the passage of the enacting laws, not the regulations themselves. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

**The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California**

These proposed regulations codify statutes that have been in effect as far back as 2002, with the majority of bills being passed between 2002 and 2009. The most recent bill included in this package (AB 261) was passed in 2013 and reflects a single change in the regulations proposed. Bills enacted through this regulatory action include: SB 1898,

Chapter 557, Statutes of 2002; SB 211, Chapter 409, Statutes of 2003; SB 540, Chapter 322, Statutes of 2003; SB 1662, Chapter 401, Statutes of 2004; SB 141, Chapter 250, Statutes of 2005; AB 179, Chapter 456, Statutes of 2005; AB 949, Chapter 686, Statutes of 2007; SB 781, Chapter 617, Statutes of 2009; and AB 261, Chapter 290, Statutes of 2013. The proposed regulations are implementing state laws. If there were to be any impact on the creation of new businesses or the elimination of existing businesses within the State of California, it would be a result of the passage of the enacting laws, not the regulations themselves. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

### **The Expansion of Businesses Currently Doing Business Within the State of California**

These proposed regulations codify statutes that have been in effect as far back as 2002, with the majority of bills being passed between 2002 and 2009. The most recent bill included in this package (AB 261) was passed in 2013 and reflects a single change in the regulations proposed. Bills enacted through this regulatory action include: SB 1898, Chapter 557, Statutes of 2002; SB 211, Chapter 409, Statutes of 2003; SB 540, Chapter 322, Statutes of 2003; SB 1662, Chapter 401, Statutes of 2004; SB 141, Chapter 250, Statutes of 2005; AB 179, Chapter 456, Statutes of 2005; AB 949, Chapter 686, Statutes of 2007; SB 781, Chapter 617, Statutes of 2009; and AB 261, Chapter 290, Statutes of 2013. The proposed regulations are implementing state laws. If there were to be any impact on the expansion of businesses currently doing business within the State of California, it would be a result of the passage of the enacting laws, not the regulations themselves. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

### **Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment**

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: (1) providing residents and their families with information necessary to make informed choices related to basic services, rate increases and fees as provided in an RCFE Admission Agreement; (2) clarifying admission agreement provisions that are prohibited; (3) requiring specific language to be included in admission agreements; and (4) clarifying responsibilities of RCFE licensees. This regulatory action maintains the intent of the Legislature in enacting the authorizing statutes to establish laws to protect the right of residents in RCFEs and to provide residents and licensees with clear information that is easy to understand.

#### **g) Benefits Anticipated from Regulatory Action**

This regulatory action will benefit families in California in need of services provided at RCFE, as these amendments provide them with information necessary to make informed choices related to basic services, rate increases and fees as provided in the Admission Agreement, and clarifies provisions that are prohibited. These regulations require specific language to be included in the admission agreement and responsibilities of licensees. These regulation amendments maintain the intent of the Legislature in enacting the authorizing statutes to establish laws to protect the right of residents in RCFEs and to provide residents and licensees with clear information that is easy to understand.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.